

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**GENERAL PROCEDURAL ORDER**  
**IN CRIMINAL MATTERS BEFORE JUDGE NANCY GERTNER**

July 8, 2004

In light of the United States Supreme Court's decision in Blakely v. Washington, \_\_\_ S.Ct. \_\_\_, 2004 WL 1402697 (June 24, 2004), the Court hereby orders the following as to all cases pending before Judge Gertner:

1. All defendants who have pleaded guilty (and whose plea has been accepted by the Court) or who have been found guilty, are to submit a response addressing the following points five days before their sentencing hearing (or immediately with respect to cases that are scheduled within the next week). This submission can be in the form of a letter to the Court with a copy to opposing counsel.
  - a. To what degree are the issues in the case affected by the Blakely decision?
  - b. What remedy does the defendant seek -- to apply the Guidelines as per United States v. Shamblin, No. 03-00217, 2004 WL 1468561 (S.D.W.V. June 30, 2004), or to challenge the constitutionality of the Guidelines after Blakely as in United States v. Croxford, No. 02-00302, 2004 WL 146211 (D.Utah June 29, 2001), or some other remedy?
  - c. Does the defendant waive his or her Blakely rights? (If so, such waivers must be made on the record in writing or in open court.)
  - d. If there are no Blakely issues or the defendant wishes to waive any Blakely rights, the Court will proceed with the sentencing as scheduled.
  - e. If the defendant wishes to press Blakely issues, either as per Shamblin or as per Croxford, the Court will defer the sentencing (upon the filing of a motion to continue the sentencing hearing), to give the parties an opportunity to brief the issues.

**SO ORDERED.**

**Dated: July 8, 2004**

**s/NANCY GERTNER, U.S.D.J.**